

A RESOLUTION

BY

Celia Kinsler Joyce M. Shepard

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE PATH FOUNDATION, INC. ("PATH"), APPOINTING PATH TO ACT AS THE CITY'S AGENT AND CONSTRUCTION MANAGER FOR FOUR TRAIL PROJECTS (ATLANTA MEMORIAL / TANYARD PARK TRAIL; THE SOUTHTOWNE TRAIL; AND TWO SECTIONS OF THE WEST END TRAIL) IN CONJUNCTION WITH THE TRANSPORTATION ENHANCEMENT ACTIVITIES PROGRAM AND THE CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM ADMINISTERED BY THE GEORGIA DEPARTMENT OF TRANSPORTATION; AND FOR OTHER PURPOSES.

WHEREAS, the City has the goal of providing trails for the use of its citizens and visitors as a safe venue to engage in outdoor activities free of conflicts with automobiles on the streets and rights of way; and

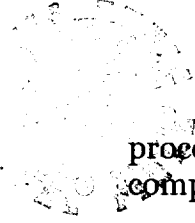
WHEREAS, the stated goal of PATH is to facilitate such trail systems by providing expertise in the planning and implementation of such project and locating private funding to combine with the local government match necessary to access federal funding made available as a part of the Transportation Enhancement Activities program and the Congestion Mitigation and Air Quality Improvement program administered by the Georgia Department of Transportation; and

WHEREAS, these programs make federal funding available in conjunction with local matching contributions for the design, engineering, and construction work necessary to complete certain infrastructure improvement projects which are made a part of the Regional Transportation Improvement Plan; and

WHEREAS, if local matching funds can be made available by the City, the Georgia Department of Transportation (the "Department" or "GDOT") will commit up to 80% of the funds necessary to design and/or construct four trail projects: (1) STP-0000-00(187), PI#0000187, (the "Atlanta Memorial / Tanyard Park Trail"); (2) STP-0000-00(194), PI#0000194, (the "Southtowne Trail"); (3) STP-000-E(220), PI#771252, (the "West End Trail") (4) STP-00BK(22), PI#762562 (the "West End Trail CMAQ"); (collectively, the "Projects"); and

WHEREAS, PATH has facilitated arrangements in which large amounts of funding were made available from sources other than the City of Atlanta for design, engineering, and construction work connected with development of the various Projects; and

WHEREAS, the City has committed through the appropriation of funding from various sources, including without limitation, impact fees, Quality of Life Improvement Bond



proceeds, impact fees and General Fund revenues to provide funds necessary to complete the local match requirements necessary to secure the federal funding; and

WHEREAS, PATH, because of its ability and willingness to acquire and expend such non-City funds for the development of the aforementioned trail projects, offers unique opportunities, efficiencies and qualifications not elsewhere available; and

WHEREAS, the City of Atlanta and PATH believe that a strong working relationship offers the City and its citizens a unique opportunity for the development of new greenspace, recreation areas and alternative transportation infrastructure which will significantly improve the quality of life for all citizens of the City; and

WHEREAS, the City desires the continued involvement of the concerned and committed citizens who comprise PATH in the development of the desires to work with the City to supervise, certain design, engineering, and construction work associated with the development of the Projects; and

WHEREAS, with reference to the Atlanta Memorial / Tanyard Park Trail, \$37,500 in Quality of Life Improvement Bond proceeds have been made available by Ordinance 01-O-0301 adopted by the City Council on August 6, 2001 and approved by the Mayor on August 13, 2001 and Ordinance 02-O-0091 adopted by the City Council on March 18, 2002 and approved by the Mayor on March 26, 2002 (attached hereto as part of Exhibit "A") and Resolution 98-R-0726, adopted by the City Council on April 20, 1998, and approved by the Mayor on April 27, 1998 (attached hereto as part of Exhibit "A"), authorized the Mayor to enter into an agreement with PATH; and

WHEREAS, with reference to the Southtowne Trail, PATH has facilitated an arrangement in which \$76,500 has been or can be made available from sources other than the City of Atlanta for design, engineering, and construction work connected with development of said project and Ordinance 01-O-0301 adopted by the City Council on August 6, 2001 and approved by the Mayor on August 13, 2001, committed City funds in the amount of \$34,500 (attached hereto as part of Exhibit "A") and Resolution 98-R-0726, adopted by the City Council on April 20, 1998, and approved by the Mayor on April 27, 1998 (attached hereto as part of Exhibit "A"), authorized the Mayor to enter into an agreement with PATH; and

WHEREAS, with reference to the West End Trail, PATH has facilitated an arrangement in which \$70,000 has been or can be made available from sources other than the City of Atlanta for design, engineering, and construction work connected with development of the Project Ordinance 02-O-0091 adopted by the City Council on March 18, 2002 and approved by the Mayor on March 26, 2002, committed the City funds (attached hereto as part of Exhibit "A") \$30,000 in Quality of Life Improvement Bond proceeds and Resolution 98-R-0726, adopted by the City Council on April 20, 1998, and approved by the Mayor on April 27, 1998 (attached hereto as part of Exhibit "A"), authorized the Mayor to enter into an agreement with PATH; and



WHEREAS, with reference to the West End Trail CMAQ, Ordinance 01-O-0301, adopted by the City Council on August 6, 2001 and approved by the Mayor on August 13, 2001 (attached as part of Exhibit "A"), committed \$250,000 in City funds and Resolution 98-R-0726, adopted by the City Council on April 20, 1998, and approved by the Mayor on April 27, 1998, (attached as part of Exhibit "A") authorized the Mayor to enter into an agreement with PATH; and

WHEREAS, for the convenience of the City these four agreements can be consolidated into one contract.

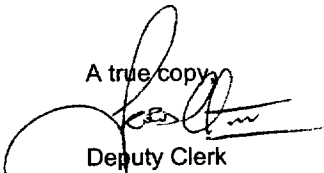
NOW THEREFORE, be it resolved by the Council of the City of Atlanta as follows:

Section 1. That the Mayor is hereby authorized to execute on behalf of the City of Atlanta, a contract with the PATH Foundation, Inc. to allow PATH to act as the City's agent and construction manager and to engage one or more general contractors to complete the City's obligations as more specifically provided in four agreements between the City of Atlanta and the Georgia Department of Transportation as set forth as Exhibit "B" (the "Project Agreements"). The Project Agreements are: (1) STP-0000-00(187), PI#0000187, (the "Atlanta Memorial / Tanyard Park Trail"); (2) STP-0000-00(194), PI#0000194, (the "Southtowne Trail"); (3) STP-000-E(220), PI#771252, (the "West End Trail") (4) STP-00BK(22), PI#762562 (the "West End Trail CMAQ").

Section 2. The employment of PATH for the purposes set forth in Section 1 is approved so long as the funding for such projects is provided in the manner set forth in the "whereas" clauses hereinabove setting forth the premises of this resolution and that any increase in the City's financial obligation above that specified in the authorizing legislation be approved by further action of the City Council.

Section 3. The City Attorney be and hereby is directed to negotiate, prepare, review and present to the Mayor for execution, the agreement(s) necessary to effect the intent of this resolution provided that such agreements are in compliance with the conditions set forth herein.

A true copy



Deputy Clerk

ADOPTED by the Council
APPROVED by the Mayor

May 16, 2005
May 23, 2005



STATE OF GEORGIA
COUNTY OF FULTON

THIS AGREEMENT made and entered into this _____ day of _____, 2005 by and between the CITY OF ATLANTA, (the "City") a municipal corporation of the State of Georgia, and PATH Foundation, Inc., ("PATH") a non-profit corporation organized and existing under the laws of the State of Georgia.

WITNESSETH

WHEREAS, the City has the goal of providing trails for the use of its citizens and visitors as a safe venue to engage in outdoor activities free of conflicts with automobiles on the streets and rights of way; and

WHEREAS, the stated goal of PATH is to facilitate such trail systems by providing expertise in the planning and implementation of such project and locating private funding to combine with the local government match necessary to access federal funding made available as a part of the Transportation Enhancement Activities program and the Congestion Mitigation and Air Quality Improvement program administered by the Georgia Department of Transportation; and

WHEREAS, these programs make federal funding available in conjunction with local matching contributions for the design, engineering, and construction work necessary to complete certain infrastructure improvement projects which are made a part of the Regional Transportation Improvement Plan; and

WHEREAS, if local matching funds can be made available by the City, the Georgia Department of Transportation (the "Department" or "GDOT") will commit up to 80% of the funds necessary to design and/or construct four trail projects: (1) STP-0000-00(187), PI#0000187, (the "Atlanta Memorial / Tanyard Park Trail"); (2) STP-0000-00(194), PI#0000194, (the "Southtowne Trail"); (3) STP-000-E(220), PI#771252, (the "West End Trail") (4) STP-00BK(22), PI#762562 (the "West End Trail CMAQ"); (collectively, the "Projects"); and

WHEREAS PATH has facilitated arrangements in which large amounts of funding were made available from sources other than the City of Atlanta for design, engineering, and construction work connected with development of the various Projects; and

WHEREAS, the City has committed through the appropriation of funding from various sources, including without limitation, impact fees, Quality of Life Improvement Bond proceeds, and General Fund revenues to provide funds necessary to complete the local match requirements necessary to secure the federal funding; and

WHEREAS, PATH, because of its ability and willingness to acquire and expend such non-City funds for the development of the aforementioned trail projects, offers unique



opportunities, efficiencies and qualifications not elsewhere available; and

WHEREAS, the City of Atlanta and PATH believe that a strong working relationship offers the City and its citizens a unique opportunity for the development of new greenspace, recreation areas and alternative transportation infrastructure which will significantly improve the quality of life for all citizens of the City; and

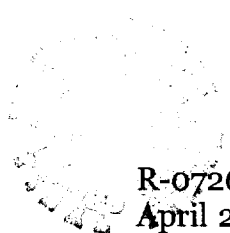
WHEREAS, the City desires the continued involvement of the concerned and committed citizens who comprise PATH in the development of the desires to work with the City to supervise, certain design, engineering, and construction work associated with the development of the Projects, under the terms provided in this agreement and its exhibits and attachments (hereinafter collectively referred to as the "Agreement"); and

WHEREAS, with reference to the Atlanta Memorial / Tanyard Park Trail, \$37,500 in Quality of Life Improvement Bond proceeds have been made available by Ordinance 01-O-0301 adopted by the City Council on August 6, 2001 and approved by the Mayor on August 13, 2001 and Ordinance 02-O-0091 adopted by the City Council on March 18, 2002 and approved by the Mayor on March 26, 2002 (attached hereto as part of Exhibit "A") and Resolution 98-R-0726, adopted by the City Council on April 20, 1998, and approved by the Mayor on April 27, 1998 (attached hereto as part of Exhibit "A"), authorized the Mayor to enter into this agreement with PATH; and

WHEREAS, with reference to the Southtowne Trail, PATH has facilitated an arrangement in which \$76,500 has been or can be made available from sources other than the City of Atlanta for design, engineering, and construction work connected with development of said project and Ordinance 01-O-0301 adopted by the City Council on August 6, 2001 and approved by the Mayor on August 13, 2001, committed City funds in the amount of \$34,500 (attached hereto as part of Exhibit "A") and Resolution 98-R-0726, adopted by the City Council on April 20, 1998, and approved by the Mayor on April 27, 1998 (attached hereto as part of Exhibit "A"), authorized the Mayor to enter into this agreement with PATH; and

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WHEREAS, with reference to the West End Trail CMAQ, Ordinance 01-O-0301, adopted by the City Council on August 6, 2001 and approved by the Mayor on August 13, 2001 (attached as part of Exhibit "A"), committed \$250,000 in City funds and Resolution 98-



R-0726, adopted by the City Council on April 20, 1998, and approved by the Mayor on April 27, 1998, (attached as part of Exhibit "A") authorized the Mayor to enter into this agreement with PATH; and

WHEREAS, with reference to this contract, the City Council of the City of Atlanta has authorized the Mayor to engage PATH to perform the services specified herein pursuant to Resolution 05-R - xxxx, attached as part of Exhibit "A"; and

NOW THEREFORE, for and in consideration of the mutual agreements between the parties hereinafter set forth, and for other good and valuable consideration, the parties hereto do agree as follows:

1.

STATEMENT OF AGREEMENT

The City of Atlanta (hereinafter, "the City") and PATH Foundation, Inc., (hereinafter, "PATH" or "Construction Manager") hereby agree that PATH will enter into agreements with one or more general contractors for the services hereinafter described in accordance with the terms and conditions set forth in this Agreement and will supervise the performance of the Scope of Work in the capacity as the Construction Manager for the City of Atlanta.

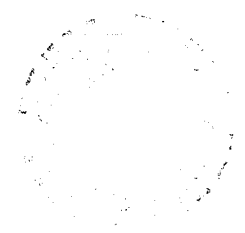
The Scope of Work consists of four projects to be completed in accordance with the terms and conditions set forth in this Agreement and as more specifically provided in four agreements between the City of Atlanta and the Georgia Department of Transportation as set forth as Exhibit "B" (the "Project Agreements"). The Project Agreements are: (1) STP-0000-00(187), PI#0000187, (the "Atlanta Memorial / Tanyard Park Trail"); (2) STP-0000-00(194), PI#0000194, (the "Southtowne Trail"); (3) STP-000-E(220), PI#771252, (the "West End Trail") (4) STP-00BK(22), PI#762562 (the "West End Trail CMAQ") (the "West End Trail CMAQ"). The use of the term "Project" may refer to any one of the listed projects. Where a specific project name is used, such reference shall be only to that project.

PATH will supervise the performance of the contracts for completion of the Project Agreements in the capacity of the Construction Manager for the City of Atlanta. PATH shall act as the City's agent and enter into agreements with a project manager, engineer professional or technical consultants and one or more construction contractors (hereinafter also referred to as "Persons") to complete the work required by the Project Agreements so long as the process used to enter into such agreements and the terms of such agreements are consistent with and permitted by the Project Agreement. This Agreement does not assign, sublet or transfer any or all of the City's interest in the Project Agreements.

THE EFFECT OF THE PROJECT AGREEMENTS BETWEEN
THE CITY OF ATLANTA AND THE GEORGIA DEPARTMENT OF TRANSPORTATION

Construction Manager stipulates that it is aware of and has fully reviewed each individual Project Agreement between the City and the Department hereto attached as Exhibit B. In any case where the terms of this Agreement may be interpreted or construed to require a lesser obligation of the Construction Manager or Persons employed by the Construction Manager, to the City than the obligations of the City to the Department, as set forth in the any of the Project Agreements, the terms of the individual Project Agreement shall be considered as further clarifying and explaining the obligations of Construction Manager and the Persons employed by the Construction Manager under this Agreement unless it is specially stated that such variation in obligations is permitted. Construction Manager agrees that its obligation under this Agreement is to hire and manage Persons to perform work equal to that which the City is required to perform under the Project Agreements.

- (a) Under no circumstances shall the City be obligated to supply any funds to complete any portion of the work or satisfy any claims of the Construction Manager or any other Person after termination of any Project Agreement by the Department.
- (b) Should the Department terminate any Project Agreement prior to the completion of the work, Construction Manager agrees that its contract shall specify that any part of any of the Projects, which is uncompleted as of the date of termination, shall be left in a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic and which as near as possible reflects the condition of those areas of the City prior to the beginning of construction.
- (c) The City agrees that should the Department terminate any Project Agreement prior to the completion of the work, that the Construction Manager or Persons employed by the Construction Manager shall receive the reimbursement to which the City would be entitled under the terms of said Project Agreement, provided that such funds are not required to restore the any area of the City disturbed in the construction to a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic.
- (d) If the Construction Manager is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently disregards laws, ordinances,



rules, regulations, or orders of any public authority having jurisdiction, or fails to comply with any terms or condition of this Agreement, then the City may, without prejudice to any right or remedy, and after giving notice required by this section, terminate this Agreement by thirty (30) days prior written notice of such termination, specifying its effective date, and finish this project by whatever method it deems expedient, including but not limited to replacing the Construction Manager by another Construction Manager. The City may at its sole option elect to receive the assignment from the Construction Manager of any contract entered into by the Construction Manager.

- (e) The City may, at any time upon thirty (30) days prior written notice to the Construction Manager, terminate (without prejudice to any right or remedy of the City) the whole or any portion of the Agreement for the convenience of the City. If the City terminates the whole or any portion of this Agreement at the City's convenience, then the City shall only be liable for those reasonable costs reimbursable and work satisfactorily performed up to the date of termination and for reasonable expenses in demobilizing.

3.


TIME OF PERFORMANCE

Construction Manager shall commence the Services required by the Contract Documents relative to the Project no later than ten (10) calendar days after receipt of the Notice to Proceed. The work to be performed under the supervision of the Construction Manager shall be completed on or before the deadline required in the Project Agreements. Provided however that Construction Manager may request that the City seek an extension of the time for completion of any Project Agreement and that if such extension is granted, such extension shall apply to this Agreement. The City agrees to request an extension of such Project Agreement from the Department within five business days after receipt of a written request for extension from Construction Manager. In addition, Construction Manager may request that the scope of any phase or part of any Project under a Project Agreement be allocated or divided or that the order of letting the Project be adjusted and the City agrees to seek Department approval of such request, and if granted the request shall apply to this Agreement. The City agrees to submit said requests within five business days after receipt of a written request from Construction Manager

4.


PROFESSIONAL RESPONSIBILITY


- (a) Construction Manager agrees that it will secure the employment of all Persons required to perform all services to be completed under this Agreement. This



Agreement shall not be assigned.

- (b) All the services required hereunder will be performed under the direct supervision of the Construction Manager. All Persons hired to engage in the work supervised by the Construction Manager shall be fully qualified under the rules and regulations set forth by GDOT and shall be authorized or permitted under applicable State and local law to perform such services. The failure to employ fully qualified Persons as set forth in this subpart is specifically agreed to be the responsibility of the Construction Manager who shall be responsible for any costs or expenses resulting from such occurrence.
- (c) Construction Manager agrees that all agreements with any Person made pursuant to the this Agreement shall cause all such Persons to be bound to the same terms and conditions and standards of performance as set forth in the Project Agreement for which said Person was employed. No action, omission, error or failure to act on the part of any Person shall excuse the obligations of Construction Manager under this Agreement to cause all Persons employed to be bound to the same terms and conditions and standards of performance as set forth in the Project Agreement for which said Person was employed. The obligation to require that all Persons employed on the various Projects be bound to the same terms and conditions and standards of performance as set forth in the Project Agreement for which said Person was employed is specifically agreed to be the responsibility of the Construction Manager who shall be responsible for any costs or expenses resulting from such its failure to impose such terms and conditions.
- (d) Construction Manager shall require in all agreements that all plans are to be prepared in English units and that any Person must correct or revise or cause to be corrected and revised any errors and deficiencies in the designs, drawings, specifications, construction and/or other services as required in any Project Agreements and furnished for the Project on behalf of the City under this Agreement, for which the City has received notice from the Department, and within such time that the City shall not be in breach of its obligations to the Department under such Project Agreement. The City shall give such written notice to Construction Manager no later than the third business day after receipt of notice from the Department. Construction Manager is aware that the City is obligated to address any errors or deficiencies in the work as specified in the Project Agreement and/or assume all responsibility caused by such errors and deficiencies and agrees that the time period specified herein is reasonable for Construction Manager to require that such revisions and corrections be made. The obligation to require that all Persons employed on the various Projects must correct or revise or cause to be corrected and revised any errors and deficiencies as set forth is specifically agreed to be the responsibility of the Construction Manager who shall be responsible for any costs or expenses resulting from such its failure to impose such terms and conditions.

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- (e) Construction Manager shall include in any contract for any part of any Project, a requirement that the contractor shall be responsible for any claim, damage, loss or expense to the City that is attributable to negligent acts, errors or omissions related to the designs, drawings, specifications, construction and/or other services required to be furnished by or on behalf of the City pursuant to any of the Project Agreements. In the event that any claim, damage, loss or expense attributable to such negligent acts, errors or omissions does arise and the Construction Manager has failed to provide in the contract that such claim, damage, loss or expense shall be the responsibility of the contractor, Construction Manager shall be required to indemnify the City against such claim, damage, loss or expense.
- (f) Prior to the later of: (i) the Department's return to City of a fully executed Certification of Final Acceptance; or (ii) the completion of the Final Audit, if required, by the Department or FHWA or designee, Construction Manager agrees that authorized representatives of the Department and the Federal Highway Administration ("FHWA") and the City may at all reasonable time review and inspect the activities and data collected under the terms of this Agreement and any amendments hereto, including but not limited to all reports, drawings, studies, specifications, estimates, maps, and computations, prepared by or for the City, Construction Manager or any other Person.
- (g) Construction Manager shall incorporate into all of its agreements the requirement that any reasonable recommendation of the Department or the City shall be included in the design documents being developed, provided that the City's review recommendations are made prior to the Department's final approval of the design documents. The City shall be given written notice of each submission to the Department and provided with sufficient information to determine if the plans to be submitted to the Department have been reviewed by the City prior to submission to the Department for final approval.
- (h) Construction Manager agrees that the specifications required by the Department in transportation infrastructure improvements are generally known and that the specifications to be applied to the Project may be ascertained through the exercise of due diligence such that it is possible to agree to perform the Scope of Work under the terms of the Project Agreement even if such terms are not specifically set forth herein or in the Project Agreement.
- (i) The City will make available in a timely manner all records and documents required by Construction Manager to fulfill the Project Agreements.
- (j) Any data transferred to Construction Manager by the City remains the proprietary product of the City. The City shall retain title and ownership of all data including any digital data. In no event will the City be liable for any damages



whatsoever, including but not limited to, direct or indirect damages, any loss of profits, any costs or expenses incurred, any lost savings, or other incidental or consequential damages, arising out of the use or arising out of the inability to use any data transferred by the City. Construction Manager may not redistribute, rent, lease, sell, transfer or otherwise use for any purpose not specific to this contract, any data provided by the City, or any portion thereof, without the express written permission of the City.

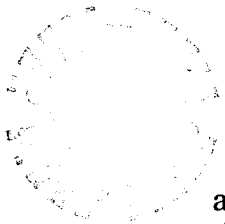
- (k) The Construction Manager for itself, its successors, and its assigns and any Person employed by it in any capacity, waives all rights to any claim to damages whatsoever arising out of the use of any City data for any Project, and/or the provision of this data to Construction Manager and/or the transfer of this data to Construction Manager. This waiver provision shall be included in any and all contracts or agreements related to any Project and that any Person employed on any Project shall agree to the same.
- (l) Construction Manager agrees that all reports, plans, drawings, studies, specifications, estimates, maps, computations, computer diskettes and printouts, and any other data prepared under the terms of this Agreement or developed in connection with any Project ("Project Data") shall become the property of the City. One copy of all Project Data shall be organized, indexed, bound, and delivered to the City no later than the advertisement of the Project for letting. The City shall have the right to use Project Data without restriction or limitation unless otherwise provided herein. Subject only to the terms of this Agreement which specify otherwise, Construction Manager warrants that it owns all Project Data and has the right to grant unlimited use of all Project Data to the City. Construction Manager waives all claims for compensation connected with any future use of the Project Data. The City agrees that Project Data is intended to be specific to this Project ("Project Data").

5.

FUNDING OF THE PROJECT

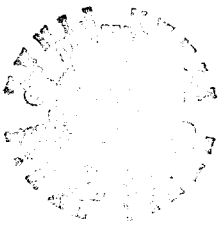
Construction Manager and the City hereby acknowledge and agree that each Project Agreement set forth in Exhibit "B" contains a Budget Estimate specifying the total estimated costs for said Project. Construction Manager and the City further acknowledge and agree that each Project Agreement states that funds of the Department, funds apportioned to the Department by the Federal Highway Administration, capital funding as provided by the terms of the Intergovernmental Agreement Relating to Land Transportation Projects or a combination of funds from said sources or regional funds shall be subject to the terms of the Project Agreement.

- (a) Construction Manager acknowledges and agrees that each Project budget and the funding described in this Agreement represents the entire funding of said Project



and includes any and all claims by Construction Manager against the City under this Agreement and/or any and all claims by any Person in the completion of any Project which have now accrued or which may accrue in the future. The City agrees to cooperate with all reasonable applications for budget adjustments which Construction Manager may request that the City forward to GDOT.

- (b) The City and the Construction Manager shall contribute part of the local match amount required for each Project by funding all or certain portions of the project costs as described in this Agreement as required by the various Project Agreements attached as Exhibit "B." The City and the Construction Manager agree that this amount may include amounts expended prior to the full execution this Agreement.
- (c) The City and the Construction Manager acknowledges and agrees that the funding commitments are:
 - (i) with respect to the Atlanta Memorial Trail, the City agrees that the sum of \$37,500 is to be paid from Quality of Life Bond Funds appropriated to City of Atlanta Fund Account and Center Number 1C45 77401 Y63Fo603BG. All costs of the Project in excess of available federal funds, regional funds or funds which may be contributed through Quality of Life Matching Funds are solely the responsibility of Construction Manager. The City may, at its sole discretion contribute additional funds to the Project.
 - (ii) with respect to the Southtowne Trail, Construction Manager agrees that it shall contribute \$76,500 to the Project by funding all or certain portions of the project costs for the preconstruction engineering and/or design activities as per the Project Agreement attached as part of Exhibit "B." The City agrees that this amount may include amounts expended prior to the full execution this Agreement. Any expenses incurred prior to the date of this Agreement which the Construction Manager desires to be charged against the amount to be contributed shall be subject to the same audit and verification requirements as would be applicable to any expense incurred after the full execution of this Agreement. The City will commit \$34,500 to this Project with said sum to be paid from Transportation Impact Fees appropriated to City of Atlanta Fund Account and Center Number 1C28 77401 M23Fo3869985. All costs of the Project in excess of available federal funds, regional funds or funds which may be appropriated by the City are solely the responsibility of Construction Manager. The City may, at its sole discretion contribute additional funds to the Project.
 - (iii) with respect to the West End Trail, Construction Manager agrees that it shall contribute \$70,000 to the Project by funding all or certain portions of the project costs for the preconstruction engineering and/or design



activities as per the Project Agreement attached as Exhibit "B." The City agrees that this amount may include amounts expended prior to the full execution this Agreement. Any expenses incurred prior to the date of this Agreement which the Construction Manager desires to be charged against the amount to be contributed shall be subject to the same audit and verification requirements as would be applicable to any expense incurred after the full execution of this Agreement. Construction Manager acknowledges and agrees that based on the contribution of PATH that the City will commit \$30,000 to this Project with said sum to be paid from Quality of Life Bond Funds appropriated to City of Atlanta Fund Account and Center Number 1C45 77401 Y63F060392BG. All costs of the Project in excess of available federal funds, regional funds or funds which may be contributed through Quality of Life Matching Funds are solely the responsibility of Construction Manager. The City may, at its sole discretion contribute additional funds to the Project.

- (iv) with respect to the West End Trail CMAQ, the City will commit \$239,500 to this Project with \$75,000 of said sum to be paid from City of Atlanta Fund Account and Center Number 1C28 77401 N12F03559991 with \$164,500 of said sum to be paid from City of Atlanta Fund Account and Center Number 1C28 77401 N12F03559985. All costs of the Project in excess of available federal funds, regional funds or funds which may be appropriated by the City are solely the responsibility of Construction Manager. The City may, at its sole discretion contribute additional funds to the Project.
- (d) In the event of termination of any of the Projects by the Department, the obligations of the City and the Construction Manager for further funding are governed by Paragraph 2, subparts (a), (b) and (c) of this Agreement.
- (e) The Construction Manager acknowledges and agrees that the funding for each Project is independent and that funds allocated for any one Project may not be used for another Project under any circumstances without specific authorization from GDOT.

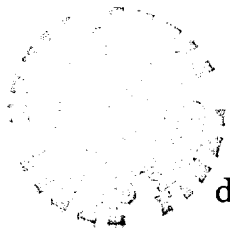
6.

REPORTS AND DOCUMENTATION

- (a) All reports, information, data or other documents, given to Construction Manager by the City or gathered or created by the Construction, under this Agreement shall be kept confidential and shall not be made available to any Person, individual or organization by Construction Manager without the prior written approval of the City. Documents prepared by Construction Manager

containing information or data, in any form, that was provided to Construction Manager by the City and that would not have been available to Construction Manager except for the City's transfer of such information or data pursuant to this Agreement or in anticipation of this Agreement, shall not be made available to any individual or organization by Construction Manager for any purpose not specific to this contract without the prior written approval of the City. All data stored in digital or electronic format ("digital data") that is transferred to the Construction Manager is the proprietary product of the City. The City shall retain title and ownership of this digital data.

- (i) Construction Manager shall specifically provide in all contracts or agreements that the specific obligations set forth in this section shall be binding on any Persons and such documents shall further provide that in the event that any Person employed on the Project shall breach the agreement to keep confidential all reports, information, data or other documents, given to Construction Manager by the City, such Person shall indemnify the City for all costs which are required by the City to enforce its rights to ownership of the reports, information, data or other documents, given to Construction Manager by the City or which arise from any issue related to the release of the same.
- (b) The City will make available in a timely manner all records and documents required by the Construction Manager to fulfill the Scope of Work.
- (c) In no event will the City be liable for any damages arising out of the use or arising out of the inability to use its documents or digital data including without limitation, direct or indirect damages, loss of profits, costs or expenses incurred, lost savings, or other incidental or consequential damages,. The Construction Manager may not, rent, lease, sell, transfer or otherwise use for any purpose not specific to this contract, any documents or digital data provided by the City, or any portion thereof, without the express written permission of the City.
- (d) The City has made known to the Construction Manager, and the Construction Manager acknowledges such notice, that any or all reports and/or documents may contain errors and inconsistencies. The City does not ensure, represent, or warrant in any way the accuracy and/or reliability of any data. All data is provided in an "as is" format and condition. The Construction Manager expressly assumes all risks and liabilities that may arise from the data. Use data in no way entitles the Construction Manager or any of its officers, employees, designees, or agents to recover any damages whatsoever from the City or its officers, agents, or employees for any cause of action based on the data, whether printed or digital. The Construction Manager hereby forever waives for itself, its heirs, successors, and its assignees any and all rights to any claim to damages whatsoever arising out of the use of the City's data by the Construction Manager, and/or the provision of this data to the Construction Manager and/or the transfer of this



data to the Construction Manager.

- (i) The Construction Manager further agrees that the agreement, recited in this subpart, to waive for itself, its heirs, successors, and its assignees any and all rights to any claim to damages whatsoever arising out of the use of the City's data by the Construction Manager, and/or the provision of this data to the Construction Manager and/or the transfer of this data to the Construction Manager shall be included in any and all contracts or agreements related to the Project and that any Person employed on the Project shall agree to the same.
- (e) The Construction Manager shall provide to the City in a digital format compatible with existing data standards in use by the City of Atlanta Department of Planning and Community Development and ready for modeling, editing, and reproduction, a copy of all data compiled or inventoried or otherwise produced under this Agreement, (ii) any data enhanced or improved from the data transferred by the City to the Construction Manager, and (iii) any deliverables described in Exhibit "B" of this Agreement.

7.

CITY'S RIGHT OF APPROVAL OF PLANS & WORK

The City shall have the right to approve any part of the plans for any of the Projects. Construction Manager acknowledges and agrees that each of the Projects must meet any requirements of the City in addition to any requirements of the Department and FHWA. Construction Manager shall submit all plans for any work on the Project to the Commissioner of Public Works for the City's comments, which shall be provided in writing within ten (10) business days, unless extended by the City for reasonable grounds and with prior written notification. Construction Manager may at the time of submission of plans to the Commissioner of Public Works, submit a copy to the Department. Within two (2) business days of receipt, Construction Manager shall forward the City's comments with Construction Manager's submittals to the Department. Construction Manager shall review any previously approved plans with the City for confirmation of the City's approval.


8.

PROCUREMENT OF CONTRACTS

In the event Construction Manager in the performance of this Agreement should need to enter into a contract with a project manager, engineer professional or technical consultants and/or one or more construction contractors, the Construction Manager, acting as the City's agent, is authorized to prepare bid documents for such contracts on

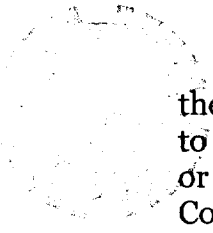
behalf of the City, provided that such contracts are procured in accordance with this Agreement, the various Project Agreements, and all applicable federal and state laws and City Ordinances. The lack of a specific requirement in this Agreement, relating to procurement of construction contracts, does not relieve Construction Manager from its obligation to follow all requirements relating to procurement of contracts, which are set forth in any Project Agreement or incorporated by reference in any of the Project Agreements. However, said procurement requirements shall not be applicable to any technical consultant or professional engaged by Construction Manager prior to the execution of this Agreement for engineering, design or right of way acquisition services. In addition said procurement requirements shall not be applicable to Construction Manager regarding construction agreements entered by the Department relative to the performance of the Project Agreement.

- (a) Any construction contract paid from funds related to the Project in excess of \$20,000 shall be let by public bid, regardless of whether such contract is funded by the matching funds provided by Construction Manager or by federal funds.
- (b) Construction Manager acknowledges and agrees that it will follow the State of Georgia's competitive bid procedure and will document all activities related to the process. All contracts let by public bid will be awarded to the lowest responsive bidder, unless it can be shown that the lowest bidder did not meet the advertised criteria for contractor selection.
- (c) Construction Manager acknowledges and agrees that the bid documents must comply with federal requirements and, ten (10) business days prior to the advertisement for bids, will provide completed plans, bid documents, and specifications to the Department's Project Manager for approval. Bid packages shall be prepared by Construction Manager in consultation with the City's Purchasing Agent (who shall undertake its best efforts to approve the bid package within five (5) business days of the approval by the Department), and approval of the construction plans by all necessary departments of the City. After approval by the Department's Project Manager and the City's Purchasing Agent, bid packages shall be made available for purchase by interested bidders at the location and in the manner customarily employed by the City of Atlanta Bureau of Purchasing and Real Estate for such purposes.
- (d) Construction Manager acknowledges and agrees that bids must be advertised at least four weeks prior to bid opening and published again two weeks prior to bid opening and once again published one week prior to bid opening. Such advertisements will state that the project is being advertised as a project of the City of Atlanta and the text of the advertisements are subject to the approval of the City's Purchasing Agent. Construction Manager will provide the proposed form of an advertisement at least ten (10) business days in advance of the time that such advertisement must be placed for publication. If the City's Purchasing Agent is unable to approve the text of advertisements submitted by Construction



Manager, the City shall provide language for the advertisement within ten (10) business days of submission to the Purchasing Agent unless extended by the City for reasonable grounds and with prior written notification. In no event shall an advertisement be placed which does not have City approved language.

- (e) If applicable, all contracts related to the Project will specify that wage rates established by the Davis-Bacon Act
- (f) Bid openings will occur at the offices of the City's Department of Procurement, located at Suite 1750, 55 Trinity Avenue, Atlanta Georgia 30335. After the opening of bids in a meeting open to the public, the names of contractors submitting bids and the amount of all bids will be read aloud.
- (g) Bid bonds equal to five (5) percent of the submitted bid must be included with all bids. The bid bond shall be in the form of a bond from a surety acceptable to the City's Risk Manager, a certified check, or other negotiable instrument and shall serve as assurance that the Person bidding for the contractor will, upon acceptance of their bid, execute such contractual documents as may be required within a specified period of time.
- (h) Construction Manager acknowledges and agrees that negotiations with bidders are prohibited. If all bids are in excess of any cost estimate set forth in the Project Agreement, Construction Manager acknowledges and agrees that it may not negotiate with the lowest bidder to bring the costs within the estimate. In such a case, Construction Manager acknowledges and agrees that it will either, revise the plans and estimate, re-advertise and re-bid for the contract, or accept the lowest responsive bid and accept responsibility for the cost difference.
- (i) Construction Manager and the City acknowledge and agree that the Department requires a bidder to be pre-qualified before submitting a bid in excess of five hundred thousand dollars (\$500,000) and that if the bid involves major structures such as bridges and retaining walls, the contractor must be pre-qualified regardless of bid amount. If a single sub-contract is in excess of two hundred and fifty thousand dollars (\$250,000), the sub-contractor must be registered with the Department . It shall be the responsibility of Construction Manager to deal directly with the Department to resolve all questions involving the pre-qualification of bidders, the determination of whether a bid involves major structures, or the registration of bidders.
- (j) Construction Manager acknowledges and agrees that no advertisements will be placed until such time as the Department has issued a notice to bid to the City authorizing the bidding of the Project.
- (k) Construction Manager and the Department of Procurement will evaluate the bids. Construction Manager shall be responsible for having the bids reviewed by



the Department, including without limitation, those parts of the bids with respect to DBE compliance. After approval by the Department of the decision to award, or the Department's decision to decline to review the decision to award, Construction Manager shall send the letter notifying the lowest responsive bidder that the contract has been awarded. Construction Manager shall be responsible for assuring execution of the contract and issuance of the notice to proceed.

- (l) Construction Manager acknowledges and agrees that all documents connected with the public bidding process and the contract will be subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq* and the City shall maintain one original and one copy of all bids.

9.

EQUAL BUSINESS OPPORTUNITY (EBO)
DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Construction Manager acknowledges and understands it is the policy of the City of Atlanta to actively promote full and equal business opportunities for local minority and female business enterprises through its Equal Business Opportunity Program as outlined in the City of Atlanta Code of Ordinances, part 2, Division 12. Construction Manager acknowledges the availability of minority and female owned firms in the Atlanta area is 17% Minority Business Enterprise ("MBE") -- African-American Business Enterprise ("AABE") and Hispanic Business Enterprise ("HBE") -- and 17% Female Business Enterprise ("FBE") as outlined in the previously referenced provisions of the City Code. Construction Manager further acknowledges that it will use its best efforts to utilize minority and female business enterprises consistent with their availability in the Atlanta area. Construction Manager agrees to provide all pertinent information regarding participation by MBE's and FBE's within 30 days after a request by the Office of Contract Compliance.

Construction Manager acknowledges and agrees that the Department has set an annual aggregate 12% Disadvantaged Business Enterprise goal for all federal aid highway projects. Construction Manager acknowledges and agrees that it will follow all applicable DBE requirements set by the Department and will be responsible for the submission of all reports required by the Department.

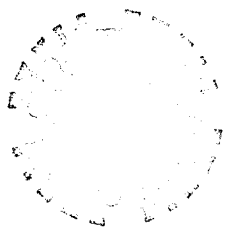
The level of minority and female enterprise participation required by the Department through its annual aggregate 12% Disadvantaged Business Enterprise goal for federal aid highway projects shall be credited fully for the purposes of the City of Atlanta's Equal Business Opportunity Program under the uniform certification process stated by the Department to be in effect for the purposes of the Project Agreement.

INSURANCE AND BONDING

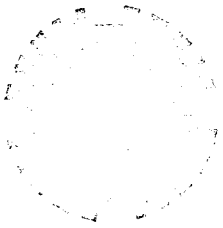
In the event Construction Manager in the performance of this Agreement should need to enter into any contract, the following insurance and bonding provisions shall be applicable:

(a) Insurance.

- (i) During the entire term of this Agreement, Construction Manager agrees to cause all Persons to maintain insurance required by the various Project Agreements, and to obtain such insurance on its own behalf in the event that its errors and omissions in the management of any of the work on the various Projects shall cause loss or expense to the City.
- (ii) Construction Manager acknowledges and agrees that the minimum levels of insurance applicable to the various Projects are as follows:
 - (1) Workmen's Compensation Insurance in accordance with the laws of the State of Georgia;
 - (2) Public Liability Insurance in an amount of not less than \$100,000 for injuries, including those resulting in death to any one person and in an amount of not less than \$300,000 on account of any one occurrence; and
 - (3) Property Damage Insurance in an amount of not less than \$50,000 from damages on account of any occurrence, with an aggregate limit of \$100,000 and that this minimum level of coverage shall be specified in any contract to be paid from funds allocated by this Agreement, provided however that the public liability insurance for injuries, including those resulting in death to any one person, shall be increased to \$500,000 per occurrence. Said insurance shall be maintained in full force and effect during the term of the Agreement and until final completion of the Project.
- (iii) The City shall be named as an additional insured in each policy related to the Project.
- (iv) The cancellation of any policy of insurance required by this Contract shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Official Code of Georgia Annotated.



- (v) At the time of the execution of any contract to be paid from funds allocated by this Agreement, Construction Manager agrees to cause each Person to furnish to the City a Certificate of Insurance showing required coverage.
 - (vi) Construction Manager agrees to indemnify the City from any losses arising from its failure to obtain and keep in force any policy of insurance or the failure of any Person to obtain and keep in force any policy of insurance. The purchase of insurance for errors and omissions in amounts deemed appropriate by the City's Risk Manager shall be sufficient for the purposes of this indemnification.
- (b) Bonding for Construction Contracts or Agreements
- (i) At the time of the execution of any construction contract to be paid from any of the funds allocated by this Agreement, Construction Manager agrees to cause each Person to furnish the City with a performance bond equal to 100% of the contract price and a payment bond equal to 110% of the contract price.
 - (ii) Each payment and performance bond obtained by any party providing construction materials or construction services under this Agreement shall name the City of Atlanta as a co-obligee.
 - (iii) All performance bonds and payment bonds required under the Project Agreement shall be in a form acceptable to the City and shall be approved by the City's Risk Manager prior to the execution of any construction contract with any Person.
 - (iv) The Person executing the performance bonds and payment bonds on behalf of the surety will file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney and certified by an official of the surety.
 - (v) Construction Manager agrees to indemnify the City from any losses arising from the failure of any construction contractor to obtain and keep in force any payment or performance bond. The purchase of insurance for errors and omissions or the purchase of a surety bond in favor of the City in amounts deemed appropriate by the City's Risk Manager shall be sufficient for the purposes of this indemnification.
- (c) Construction Manager agrees to specifically provide in all construction contracts or agreements with any Person that the specific obligations to obtain insurance and bonding set forth in this paragraph shall be binding on any who subcontractor that may be employed in any capacity and that the City shall be



indemnified for any loss or expense to the City that may be caused by the failure of such Person to require such insurance or bonding from their subcontractor.

11.


CITY'S RIGHT OF INSPECTION

Prior to the later of: (i) the Department's return to City of a fully executed Certification of Final Acceptance; or (ii) the completion of the Final Audit, if required, by the Department or FHWA or designee, the City, the Department and FHWA shall have the right to inspect any part of the work which is the subject of this Agreement, at any time. Within this specified time period, inspectors or designees from the City, the Department and FHWA are given the right of entry to all work sites at any time and all office sites during business hours and upon reasonable notice to conduct inspections of the Project and the associated records as deemed necessary. Construction Manager shall provide in all contract or agreements relating to the Project that the right of entry and inspection given, by Construction Manager in this Agreement shall be binding on all sub-contractors of whatever tier, regardless of whether such sub-contractor has a contract with Construction Manager. Within this specified time period, this right of entry and inspection shall include the right to inspect and audit all books and records of Construction Manager or of any sub-contractors, which reasonably relate to this Agreement.

12.

PAYMENT OF INVOICES

- (a) Construction Manager agrees and understands that the Project Agreements state that GDOT will only disburse funds to the City and that this Agreement states that the City shall only contribute funds as set forth in Paragraph 5.
- (b) The City shall submit to the Department a monthly report (based on calendar months) which describes the progress which was accomplished in the previous month, anticipated work to be done during the next month and any problems encountered or anticipated (the "Monthly Report").
 - (i) The preparation and presentation to the City of a proposed form of the Monthly Report, which the City shall submit to the Department, is the sole responsibility of Construction Manager. The proposed form of the Monthly Report shall be transmitted to the City no later than the 30th of every month or the next business day thereafter in the event that the 30th falls on Saturday, Sunday or a legal holiday.



(ii) The City shall, within three business days of receipt of a submission of a proposed Monthly Report, submit the same to the Department, but the City, without the approval of Construction Manager, shall have the right to add comments or other material. Construction Manager agrees that only the City may submit the Monthly Report to the Department. At the same time the Monthly Report is submitted to the Department, the City shall provide a copy to Construction Manager.

(c) Construction Manager agrees and understands that the Department will only pay to the City in proportion to the percentage of work completed for each phase of the work and will only make such payments after the receipt and review of a voucher certified by the City

(i) The City agrees to receive proposed vouchers prepared by Construction Manager and when the City is satisfied that the work is within the terms and conditions of the Project Agreement certify the voucher and transmit it to the Department, provided that the City shall not submit more than one voucher to the Department for any calendar month. At the same time a voucher is submitted to the Department, the City shall provide a copy to Construction Manager.

(ii) The City agrees to undertake its best efforts to verify whether it can certify the voucher proposed by Construction Manager within five (5) business days of the receipt of a proposed voucher. The City agrees to notify Construction Manager of any part of the proposed voucher that will not be certified and to undertake discussions as to what steps Construction Manager must undertake so that the City can agree to certify the part of the proposed voucher which is not submitted.

(iii) After its five (5) day review period, the City agrees to submit to the Department, on the next business day, all parts of the voucher which it is willing to certify. Construction Manager agrees that only the City may submit vouchers to the Department.

(iv) The preparation and presentation to the City of the documents which will comprise a voucher is the sole responsibility of Construction Manager.

(v) Upon the receipt of payment from the Department for the work submitted in a certified voucher, the City agrees to remit such funds to Construction Manager as soon as the transfer of the funds can be arranged, but in no case, no later than the second business day after receipt.

- (d) Construction Manager acknowledges and agrees that the Department will only make a final payment to the City with regard to a Project Agreement if the City agrees that the acceptance of the final payment is in full and final settlement of all claims arising against the Department for work done, materials furnished, costs incurred or other matters arising from such Project Agreement. Construction Manager further acknowledges and agrees that each Project Agreement states that the acceptance of the final payment by the City shall release the Department from any and all further claims of whatever nature, whether known or unknown, for and account of the Project Agreement and for any and all work done, and labor and materials furnished, in connection with the Project Agreement. Construction Manager acknowledges and agrees that the City will only request the final payment from the Department on the condition that Construction Manager agrees through the execution of this Agreement that Construction Manager releases the City from any and all further claims of whatever nature, whether known or unknown, for and account of this Agreement and/or such Project Agreement and for any and all work done, and labor and materials furnished, in connection with this Agreement and/or such Project Agreement, by the City making such request to the Department for final payment.
- (e) Construction Manager acknowledges and agrees that the Department will only make a final payment to the City on a Project, if the City will allow the examination and verification of the costs of said Project by the Department's representative's review of books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project as maintained by Construction Manager. Such records shall be made available to the Department and any reviewing agency designated by the Department during the performance of work on the Project and for a period of three years from the date of final payment. If the Department's examination of the cost records result in unallowable expenses, Construction Manager understands and agrees that they shall be responsible for reimbursing the City for the full amount of such disallowed expenses immediately upon the City's reimbursement of the Department, if the amount of such unallowable expenses has not already been paid to the City in anticipation of the City's payment to the Department.

13.

INDEMNIFICATION

Construction Manager acknowledges that the Project Agreements between the Department and the City which provide for the design and/or construction of those improvements described therein obligate the City to the Department in several respects and Construction Manager agrees to requires that any Person employed through a

contract to perform any work on any of the various Project Agreements shall assume all of the obligations and responsibilities of the City except where the City specifically assumes an obligation or responsibility under this Agreement. Construction Manager agrees to require that all such Persons entering into a contract to perform any work on any of the various Project Agreements shall indemnify the City with respect to any and all claims, losses or expenses which the City may incur with respect to those obligations or responsibilities which may be imposed on the City by the Department under the various Project Agreements.

Any language in any Project Agreement more specifically describing any assumption of responsibility or obligation or indemnification by the City in favor of the Department shall be construed to supplement the specific assumption of responsibilities and obligation or indemnification in any contract with other Persons. The language of this general assumption of responsibility or obligation and general indemnity shall be construed in the broadest sense to include all parts of the Project Agreement under which Construction Manager has contracted with any Person. The assumption of any responsibility or obligation in the various Project Agreements shall include an agreement by such Person to reimburse the City for the payment of all claims, expenses, costs arising from or in respect to such Project Agreement, regardless whether such claims, expenses or costs arise from or in respect to, the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished by or on behalf of the City pursuant to the Project Agreement, and whether resulting from construction delays, personal injury, injuries to property or any other type of claim expense or cost.

- (a) Construction Manager acknowledges and agrees that the general indemnity required of Persons employed through a contract to perform any work on any of the various Project Agreements must include an acknowledgement that the possibility exists that federal funds may be disapproved for reasons not relating to actual construction of the Project, including without limitation, the procurement process, proper payment of wage rates, requirements related to record keeping, and/or the final audit of the Project.
- (b) Construction Manager acknowledges and agrees that the general indemnity required of Persons employed through a contract to perform any work on any of the various Project Agreements shall specifically include a provision that such indemnity shall survive termination of the contract and this Agreement.
- (c) The requirement that this general assumption of obligation and responsibility and general indemnity is to be included in the contracts of the Persons employed by the Construction Manager shall not be construed to waive or supersede any previous language of this Agreement which specified that the Construction Manager shall be obligated to the City for any loss or expense which results from the negligence of the Construction Manager in the administration of this Agreement.

NOTICES TO THE PARTIES

The City appoints as its designated representative for the receipt of notices, submittals, or other communications, James Shelby, the Acting Commissioner of the Department of Planning and Community Development, or any successor, whose address for the purpose of this Agreement shall be:

James Shelby
Commissioner of Planning and Community Development
Atlanta City Hall
55 Trinity Avenue, S.W, Suite 1450,
Atlanta, GA, 30335
404-330-6070

Construction Manager appoints as its designated representative for the receipt of notices, submittals, or other communications, Ed McBrayer whose address for the purpose of this Agreement shall be:

Ed McBrayer
PATH Foundation, Inc.
P.O. Box 14327
Atlanta, Georgia 30324
404-875-7284

All notices, submittals or other communications shall be made to the designated representative in writing and delivered by: (a) hand delivery at the address indicated herein; (b) United States Certified Mail - Return Receipt Requested, postage prepaid; or (c) by Facsimile immediately followed by a confirmation call. The day upon which such notice is hand delivered or faxed and confirmed shall be deemed the date of service of such notice if delivered by such means. The date of signature on the Return Receipt or the date of refusal shall be deemed the date of service of such notice if delivered by United States Certified Mail. Either party may change its designated representative by notice to the other as provided herein or may name other persons as sub-designees for the receipt of specific types of materials, such as engineering plans, blueprints or other voluminous documents, provided however that the designated representative shall always receive a simultaneous notice describing the type material which is sent to any sub-designee.

15.

COMPLIANCE WITH CITY ORDINANCES

It is specifically agreed that none of the terms of this Agreement excuse, modify or waive compliance with any City ordinance.

16.

PERMITS AND LICENSES

Construction Manager shall obtain, at its own expense, all application for permits not previously provided by the City and licenses required by all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the performance of the services called for by this Agreement.

17.

GENERAL PROVISIONS OF THIS AGREEMENT

- (a) The brief capitalized and underlined headings or titles preceding each paragraph are for purposes of identification, convenience and ease of reference, and shall be disregarded in the construction of this Agreement.
- (b) No failure of either party hereto to exercise any right or power granted under this Agreement, or to insist upon strict compliance by the other party with this Agreement, and terms and conditions of this Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this Agreement.
- (c) This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia.
- (d) Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.
- (e) The termination of this Agreement shall not operate to cut off any claims or causes of action in favor of either party which occurred or arose prior to the effective date of such termination.

- (f) Any agreement between Construction Manager and any other Person shall specify that the City shall have the right to enforce the terms of the agreement without the consent of Construction Manager and that the obligations of any Person under any agreement with Construction Manager shall survive the termination of the existence of this Agreement and/or the termination of the existence of Construction Manager.

18.

ENTIRE AGREEMENT

This Agreement supersedes all prior negotiations, discussions, statements and agreements and constitutes the full, complete and entire agreement between the parties with respect to the terms of the Agreement; no member, officer, employee, representative or agent of either party has authority to make, or has made, any statement, agreement, representation to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this Agreement. No modification of or amendment to this Agreement shall be binding on either party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by both parties and incorporated in and by reference made a part hereof.

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed the seals.

PATH FOUNDATION, INC.

By: _____

Attest: _____


CITY OF ATLANTA

Municipal Clerk (Seal)

Shirley Franklin, Mayor

RECOMMENDED

Commissioner, Department of
Planning & Community Development



Commissioner, Department of
Public Works

APPROVED

Chief Financial Officer

APPROVED AS TO FORM

City Attorney



Exhibit “A”

05-R-0875

(Do Not Write Above This Line)

A RESOLUTION *City of Atlanta*

BY:

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE PATH FOUNDATION, INC. ("PATH"), APPOINTING PATH TO ACT AS THE CITY'S AGENT AND CONSTRUCTION MANAGER FOR FOUR TRAIL PROJECTS (ATLANTA MEMORIAL/TANYARD PARK TRAIL; THE SOUTHTOWNE TRAIL; AND TWO SECTIONS OF THE WESTEND TRAIL) IN CONJUNCTION WITH THE TRANSPORTATION ENHANCEMENT ACTIVITIES PROGRAM AND THE CONGESTION MITIGATION PROGRAM ADMINISTERED BY THE GEORGIA DEPARTMENT OF TRANSPORTATION, AND FOR OTHER PURPOSES.

- ☐ **CONSENT REFER**
- ☐ **REGULAR REPORT REFER**
- ☐ **ADVERTISE & REFER**
- ☐ **1st ADOPT 2nd READ & REFER**
- ☒ **PERSONAL PAPER REFER**

Date Referred *May 2, 2005*
Referred To: *City of Atlanta*
Date Referred
Referred To:
Date Referred
Referred To:
Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred To _____

Committee *6/1/05*

Date *6/1/05*
Chair *[Signature]*

Action *[Signature]*
Fav, Adv, Hold (see rev. side)
Other

Members *[Signature]*

[Signature]
[Signature]
[Signature]

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)
Other

Members

ADOPTED BY

MAY 16 2005

COUNCIL

Refer To

FINAL COUNCIL ACTION
☐ 2nd ☐ 1st & 2nd ☐ 3rd
☒ Consent ☐ V Vote ☒ RC Vote

CERTIFIED

MAY 16 2005

MAYOR'S ACTION

[Signature]

LARGE ATTACHMENT:

DOCUMENT(S),

MANUAL(S)

OR

MAP(S)

NOT COPIED,

PULL ORIGINAL

FOR COPY OR TO VIEW